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Letter dated 2 October 2008 from the Secretary-General addressed to the President of the Security Council

As you are aware, with the termination of the mandate of the United Nations Mission in Ethiopia and Eritrea as of 31 July 2008, I will no longer provide reports to the Security Council on the situation between the two countries on a regular basis. However, I have recently received a final report of the Eritrea-Ethiopia Boundary Commission, which the Registrar of the Commission felt would be useful to circulate as a document of the Security Council.

I would be grateful if you could bring the attached report to the attention of the members of the Security Council.

(*Signed*) **Ban** Ki-moon

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Twenty-seventh report of the Eritrea-Ethiopia Boundary Commission

1. This is the twenty-seventh and final report of the Eritrea-Ethiopia Boundary Commission, covering the period from 1 January to 25 August 2008. The previous report covered the period from 27 September to 31 December 27 (S/2008/40, annex II).

2. In its previous report, the Commission recalled the terms of paragraph 22 of its Statement of 27 November 2006 ("the Statement") and noted that, its meeting with the parties of 6 and 7 September 2007 notwithstanding, no progress had been made towards the construction of boundary pillars in the manner foreseen in the Statement. Noting the positions of the parties as expressed in letters of the Government of Eritrea dated 19 and 29 November 2007 and the letter of the Government of Ethiopia dated 29 November 2007, the Commission reaffirmed the considerations of fact and the statements of law set out in its Statement, and emphasized that the Delimitation Decision of April 2002 and the Statement of 27 November 2006 remained binding on the parties.

3. The Commission notes that, pursuant to articles 4 (4) and 4 (6) of the Algiers Agreement, Ethiopia had until 4 January 2008 in which it might appoint a substitute Commissioner for Sir Arthur Watts KCMG QC. Ethiopia informed the Commission that it did not consider it necessary to appoint a replacement. The Secretary-General of the United Nations has not exercised his power of appointment pursuant to article 4 (4) of the Algiers Agreement of 12 December 2000.

4. As noted in its previous report, the Commission considers that it has fulfilled the mandate given to it. The Commission notes that the following administrative matters connected with the termination of its mandate have now been concluded:

(a) On 17 January 2008, a copy of the maps illustrating the points identified in the annex to the 27 November 2006 Statement was deposited with the Secretary-General of the United Nations. Another copy for public reference has been retained in the office of the United Nations Cartographer.

(b) As the Commission noted in its previous report, Ethiopia continues to be in arrears of its share of the Commission's expenses, in breach of Article 4 (17) of the Algiers Agreement. A final financial account shall be transmitted to the parties and the remaining funds held on deposit shall be returned to the United Nations Trust Fund.

5. On 18 June 2008 the Commission sent a letter to the parties stating that:

> "It is now over six months since the expiry of the period which the Commission indicated in its Statement of 27 November 2006 and during which the Commission had hoped that the parties would either themselves proceed to the placing of pillars on the ground or allow the Commission to do so. As there has been no communication from the parties, the Commission must now reach the conclusion that the boundary stands demarcated in accordance with the coordinates annexed to that Statement, that no further activity on its part is called for, and that it should therefore take the few final steps involved in winding up its operations, These include the return of physical assets to the United Nations and the preparation of final accounts.

"If I do not hear from you to the contrary within the next two weeks I will take it that you have no objection to this procedure."

6. On 1 July 2008, Eritrea responded to the Commission's letter, stating:

"The meeting that the Eritrea-Ethiopia Boundary Commission convened with the parties in The Hague on 6 September 2007 to move the process forward was not successful because Ethiopia was still not prepared to accommodate the requirements that the Commission stipulated. While Ethiopia's refusal to comply with the Commission's delimitation and demarcation decisions is unfortunate, it in no way undermines the final and binding nature of the Commission's conclusions.

"When Ethiopia refused to come into compliance within the specified one year period, the Secretary of the Boundary Commission dispatched to the parties 45 maps, on a scale of 1:25,000, containing the demarcation of the boundary by coordinates.

"Eritrea considers that the mandate of the Boundary Commission has been fulfilled as of that time. In this spirit, Eritrea has and continues to press the United Nations Security Council to exercise its legal authority of enforcing the delimitation and demarcation determinations of the Commission.

"Eritrea wishes at this point to reiterate its gratitude for the Commission in fulfilling its mandate under these difficult conditions."

7. A copy of Eritrea's letter of 1 July 2008 is annexed to the present report. Ethiopia did not respond to the Commission's 18 June 2008 letter within the above time period.

8. Since the Commission has now concluded all administrative matters connected with the termination of its mandate, it now considers itself *functus officio*.

(*Signed*) Sir Elihu **Lauterpacht** CBE QC

25 August 2008

Annex

Letter dated 1 July 2008 from Eritrea to the Eritrea-Ethiopia Boundary Commission

Thank you very much for your letter of 18 June 2008 concerning the Boundary Commission's winding up of its operations.

As emphasized in my letter to you of 29 November 2007, Eritrea has consistently supported the work of the Commission and has from the outset recognized (as required by the Algiers Agreement of 12 December 2000) the Commission's delimitation and demarcation decisions as authoritative. As stated in article 4, paragraph 15: "The parties agree that the delimitation and demarcation determinations of the Commission shall be final and binding."

Eritrea remains committed to this principle and to all of the "delimitation and demarcation determinations" to which this paragraph refers. As my letter of 29 November 2007 clearly states, this includes not only the Commission's delimitation and demarcation decisions in general but also the Commission's coordinates:

> Eritrea acknowledges as both final and valid the coordinates that the Commission has specified and believes that these coordinates are as binding as other Commission decisions.

In its communication to the parties on 27 November 2006, the Commission notified the parties that it "cannot remain in existence indefinitely". The Commission had further noted:

> "If, by the end of that period [November 2007], the parties have not by themselves reached the necessary agreement and proceeded significantly to implement it, or have not requested and enabled the Commission to resume its activity, the Commission hereby determines that the boundary will automatically stand as demarcated by the boundary points listed in the annex hereto and that the mandate of the Commission can then be regarded as fulfilled."

The meeting that the Eritrea-Ethiopia Boundary Commission convened with the parties in The Hague on 6 September 2007 to move the process forward was not successful because Ethiopia was still not prepared to accommodate the requirements that the Commission stipulated. While Ethiopia's refusal to comply with the Commission's delimitation and demarcation decisions is unfortunate, it in no way undermines the final and binding nature of the Commission's conclusions.

When Ethiopia refused to come into compliance within the specified one-year period, the Secretary of the Boundary Commission dispatched to the parties 45 maps, on a scale of 1:25,000, containing the demarcation of the boundary by coordinates.

Eritrea considers that the mandate of the Boundary Commission has been fulfilled as of that time. In this spirit, Eritrea has and continues to press the United Nations Security Council to exercise its legal authority of enforcing the delimitation and demarcation determinations of the Commission (letter dated 18 June 2008 from President Isaias Afwerki to the President of the Security Council attached (see

enclosure)). Eritrea wishes at this point to reiterate its gratitude for the Commission in fulfilling its mandate under these difficult conditions.

(*Signed*) Professor Lea **Brilmayer**
Legal Adviser to the Office of the President
Asmara, Eritrea

Enclosure

Letter dated 18 June 2008 from the President of Eritrea to the President of the Security Council

I have noted the contents of your letter dated 10 June 2008, which states that "the Security Council is considering the terms of a future United Nations engagement, including through a possible further United Nations presence in Ethiopia and Eritrea".

As has been clarified on a number of occasions (S/2008/287, S/2008/200, S/2008/68, S/2008/54, among others) the Temporary Security Zone that was established by the Algiers Agreement has fulfilled its purpose, namely, to serve as a temporary buffer zone until the border between the two countries could be demarcated. The Ethiopia-Eritrea Boundary Commission has completed its task by demarcating its final and binding award thereby effectively ending the mandate of the United Nations Mission in Ethiopia and Eritrea and its oversight of the Temporary Security Zone. In the event, Eritrea strongly believes the key to regional peace and stability is the unconditional and immediate withdrawal of Ethiopian troops from sovereign Eritrean territory.

Indeed, article 4.15 of the Algiers Agreement states: "The Parties agree that the delimitation and demarcation determinations of the Commission shall be final and binding. Each party shall respect the border so determined, as well as the territorial integrity and sovereignty of the other party".

Needless to emphasize, the United Nations cannot have legal authority to legitimize occupation under the rubric of engagement. Going forward from this point requires exclusive focus on the provision cited above.

(*Signed*) Isaias **Afwerki**